



Meghan Rene, et al., v. Dr. Suellen Reed, et al.

Lesson 3: The Changing Meaning of “Due Process”

A lesson plan for secondary teachers on the constitutional requirement for “due process of law.”*

*The staff of the judicial branch chose this case as a useful tool to teach an interesting aspect of the law. Its selection has no bearing on how the case will ultimately be decided. Since the members of the Court did not participate in the preparation of the lesson plan; the issues raised in it will not necessarily be addressed in the oral argument.

Background:

This lesson is based on the case of *Rene v. Reed*. A case summary, the [appellant's](#) (Rene's) petition to transfer, the [appellee's](#) (Reed's) opposition to the petition to transfer, the [Court of Appeals opinion](#) and the one-hour webcast of the January 30, 2002 oral argument before the Indiana Supreme Court are all available on-line at <http://www.in.gov/judiciary/education/cotm.html>.

A separate lesson, giving an overview of the [structure of Indiana's court system](#), is also available to provide students with general information about how Indiana courts work. It can be found on the “Courts in the Classroom” homepage at <http://www.in.gov/judiciary/education/>.

A [glossary](#) of legal terms used in this and other Courts in the Classroom lesson plans is available on-line as well.

Learning Objectives:

At the end of this lesson students should be able to:

1. Discuss the different application of due process stemming from the 5th and 14th Amendments to the U.S. Constitution;
2. Explore the changing interpretation of due process from the Civil War to the present; and
3. Use classroom, library and/or Internet resources to research current press coverage of due process issues.

On-line Resources

General Resources:

- [U.S. Constitution](#) and [Bill of Rights](#)
- [Indiana Constitution](#)

Due Process Related Resources:

- [West Legal Dictionary](#)
- [Analysis and Interpretation](#): Annotations of Cases Decided by the Supreme Court of the United States (PREPARED BY THE CONGRESSIONAL RESEARCH SERVICE, LIBRARY OF CONGRESS) is a lengthy document sponsored by the U.S. Senate. Students can search it by topic. Search using terms such as “history of due process,” and you will find places within the document that discuss the changing nature of due process.
- [Touro College Law Center](#): This site offers excellent summaries and the complete texts for dozens of landmark U.S. Supreme Court decisions.

Learning Activities:

(Note: [Lesson 1](#) and [Lesson 2](#) of this curriculum unit discussed the definition of due process, and the differences between procedural and substantive due process. If students are unfamiliar with these terms, it might be useful to utilize selected parts of the earlier lessons.)

1. Although “due process” is a common expression, it is a difficult term for most people, not just high school students, to define. To complicate matters more, the meaning of “due process” has changed over the course of American history. So, it should be of comfort to your students that judges haven’t always agreed on what it means either.

The 5th and 14th Amendments assure Americans that they cannot be deprived of their rights to “life, liberty, or property, without due process of law.” Life, liberty, and property are fundamental rights. The authors of the Bill of Rights believed that additional rights, such as freedom of speech and assembly, needed to be specifically protected in the Constitution as well.

- Review the 14th Amendment to the [U.S. Constitution](#) and the [Bill of Rights](#) (particularly the 4th, 5th, 6th, and 8th Amendments) and the [Indiana Constitution](#) (particularly Article I, sections 12 and 23) for any mention of the requirement for “due process of law.”

2. In 1873 a major review of what was meant by “due process” and “equal protection” in the U.S. Constitution occurred when a group of New Orleans butchers challenged their city’s efforts to regulate the slaughtering of animals. The *Slaughterhouse Cases* 16 Wall 36 (1873) established the legal landscape of due process interpretation for the next 70 years.

Divide your students into four groups to read the four opinions in the [Slaughterhouse Cases](#). Assign one group to read the [majority opinion](#), written by Justice Samuel F. Miller, and members of the three other groups to read the three different [dissenting opinions](#) written by Justices Field, Bradley, and Swayne. There are several key points you will want to make sure your students can discuss surrounding this case.

- The majority opinion found that the Louisiana law did not violate the 14th Amendment by limiting the rights of the butchers to work in their trade. It further established that the 14th Amendment should be only very narrowly applied to the States, and that it (and the other rights protected in the Bill of Rights) were drafted to protect the people from the oppression of national government—not their state governments. Finally, Justice Miller states that the Civil War Amendments (13th, 14th, and 15th Amendments) were intended only to protect black freemen.
- The three dissenting opinions contend that access to a profession is a fundamental right protected by the 14th Amendment, and that the 14th Amendment protects the rights of *all* citizens, not just blacks. Justice Swayne emphasizes that the 14th Amendment’s purpose was to provide the national government with a means of assuring that the States did not violate the fundamental rights of any citizen.

These opinion will not be easy for students to read. A teacher might choose to print out and distribute only excerpted sections of each opinion or to go through and underline or otherwise emphasize key sections of the opinions.

3. Study of the U.S. Supreme Court’s *Slaughterhouse Cases* (1873) demonstrates how the Court is often strongly divided over major Constitutional issues. *Slaughterhouse* was a 5-4 decision, and although the majority opinion controlled, the minority was very outspoken in its disagreement. This division remained evident as the court reviewed 14th Amendment’s application over the next 100 years.

Beginning in the early 1900s, the Supreme Court’s conception of “due process” slowly changes. Until 1936, the Court consistently declared state laws that tried to control working conditions and wages unconstitutional—a violation of the due process clause. Despite these prior decisions, Elsie Parrish decided to sue her employer for violating Washington State’s minimum wage law. At the time Parrish was earning \$12 a week as a hotel maid where she worked about 48 hours a week.

In [*West Coast Hotel Co. v. Parrish*](#) 300 U.S. 379 (1937), another 5-4 decision, the Court reversed its earlier position and upheld the Washington state minimum wage law. The 14th Amendment now protected the rights of workers. State regulations were not considered oppressive and interfering with an individual’s right to work, but rather as a protection against exploitive employers.

- Depending on individual time constraints, teachers may either assign students to read the [majority and dissenting opinions](#) in *West Coast Hotel* or briefly summarize the Court’s opinion for the class.
- Ask students to compare the Court’s views of labor in *Slaughterhouse* and *West Coast Hotel* cases. Is the right to work a fundamental right? What constitutes appropriate interference? Whether or not the state can intervene in the relations between employer and employee, to protect the best interest of the employee, is at the heart of the Court’s mid-century reinterpretation of the due process clause of the 5th and 14th Amendments.
- As in the *Slaughterhouse Cases*, emphasize that the entire Court did not embrace these changes; nor did the business community. The application of the 14th Amendment to the states faced substantial criticism.

By the end of the twentieth century, of a person's due process rights had expanded considerably. Most of us assume that freedom of the press, freedom of religion, and so forth applied equally to both the state and federal governments. This has not always been the case. Prior to the passage of the 14th Amendment, the Court consistently ruled that the Bill of Rights applied only to the federal government. Beginning in the early 1900s, the Court issued opinions directing that neither the federal or state governments could abridge some of the guarantees of the Bill of Rights.

The Court was especially active in the 1960s in its extension of the 14th Amendment's due process clause to protect the civil rights of minority groups such as women and African-Americans. This new interpretation of the 14th Amendment is sometimes referred to as the "due process revolution."

- Many of the Court's decisions, expanding constitutional protections, are today considered "landmarks," and their names are familiar to many of us. Ask your students to identify what individual rights are the focuses of the following cases:

<i>Near v. Minnesota</i>	283 U.S. 697	(1931)	freedom of the press
<i>Stromberg v. California</i>	283 U.S. 359	(1931)	freedom of speech
<i>Mapp v. Ohio</i>	367 U.S. 643	(1949)	search and seizure
<i>Gideon v. Wainwright</i>	372 U.S. 335	(1963)	right to counsel
<i>Miranda v. Arizona</i>	384 U.S. 436	(1966)	reading your rights

- Using recent magazines, newspapers, or the Internet, ask students to research current discussion about the Court's interpretation of due process. For instance, many police agencies believe the courts have granted more rights to criminals instead of victims, and in the process made policing much more difficult.

For Further Study

Beginning with the information gathered in this lesson, ask students to conduct an historical research project surrounding the interpretation of "due process." Students might compare the Court's interpretation of due process doctrine in several eras or focus on a particular era, justice, or case.

Related Indiana Social Studies Standards

U.S. Government 5.3: Describe the political, personal, and economic rights of citizens embedded in the United States Constitution and in constitutional law developed through decisions of the United States Supreme Court.

U.S. Government 5.8: Analyze and evaluate decisions about rights of individuals in landmark cases of the United States Supreme Court, such as *Whitney v. California* (1927), *Stromberg v. California* (1931), *Near v. Minnesota* (1931)....

U.S. History 4.8: Evaluate the constitutional significance of the following landmark decisions of the United States Supreme Court: *Gitlow v. New York* (1925), *Stromberg v. California* (1931), *Near v. Minnesota* (1931), *Schechter v. United States* (1935), *West Coast Hotel v. Parrish* (1937).

U.S. History 9.1: Locate and analyze primary and secondary sources presenting differing perspectives on events and issues of the past.